

[Cite as *Whiteside v. Orient Correctional Inst.*, 2005-Ohio-4455.]

IN THE COURT OF CLAIMS OF OHIO
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NORMAN V. WHITESIDE	:	
Plaintiff	:	CASE NO. 2002-05751
v.	:	Judge J. Craig Wright
	:	Magistrate Steven A. Larson
ORIENT CORRECTIONAL INSTITUTION	:	<u>MAGISTRATE DECISION</u>
Defendant	:	
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{¶ 1} Plaintiff brought this action against defendant, Orient Correctional Institution (OCI), alleging that defendant lost or destroyed his property without his authorization when he was transferred from OCI to the Mansfield Correctional Institution. The issues of liability and damages were bifurcated and the case proceeded to trial on the issues of liability and civil immunity pursuant to R.C. 2743.02(F) and 9.86.

{¶ 2} At all times relevant to this action, plaintiff was an inmate in the custody and control of defendant pursuant to R.C. 5120.16. In December 2001, OCI prisoners were informed that the prison was closing and that they would be transferred to other institutions. For security reasons, prison officials did not notify inmates of the exact date and location of the transfers. Due to the impending relocation and the policies regarding personal property at the receiving institution, inmates were encouraged to reduce all of their belongings to a 2.4 cubic foot limit and mail their remaining property out of the institution.

{¶ 3} While housed at OCI, plaintiff had accumulated an extensive amount of belongings that included legal documents, transcripts, books, personal effects, and musical instruments.

Plaintiff stored his personal property in the Music Association's office or in his bunk area, which was described by inmate Michael Grover as containing "way, way more [property] than the average inmate." Plaintiff alleges that this property was lost by defendant during and after transfer to his new institution.

{¶ 4} Plaintiff has the burden of proving, by a preponderance of the evidence, that he suffered a loss and that the loss was proximately caused by defendant's negligence. *Barnum v. Ohio State University* (1977), Court of Claims No. 76-0368-AD.

{¶ 5} On January 25, 2002, plaintiff withdrew \$75.96 from his inmate account in order to "send out 10 boxes & 5 bags of legal materials + 1 typewriter + book case." (Plaintiff's Exhibit 4.) Although the cashier's statement implies that only eight boxes were mailed out, plaintiff testified that he sent out more than eight boxes. Plaintiff addressed the mail to his brother, Delayne Whiteside. While testimony at trial suggested that Mr. Whiteside refused to accept the boxes upon their arrival and returned them, no evidence was presented that conclusively showed any boxes having been returned and signed for by an agent of OCI.

{¶ 6} Additionally, this court, in *Mullett v. Department of Corrections* (1976), Court of Claims No. 76-0292-AD, held that defendant does not have the liability of an insurer (i.e., is not liable without fault) with respect to inmate property, but that it does have the duty to make "reasonable attempts to protect, or recover" such property. Defendant is not responsible for an item once it is shipped out of the facility. At that point, the item is the responsibility of the mail carrier. *Owens v. Department of Rehabilitation and Correction* (1986), Court of Claims No. 85-08061-AD. Therefore, plaintiff has failed to prove by a preponderance of

the evidence, that plaintiff's mail was returned to the institution or that defendant was otherwise responsible for the loss of the property plaintiff mailed to family members in January 2002.

{¶ 7} On March 8, 2002, an additional eight packed boxes were turned over to plaintiff's brother and sister. Regina Holland, plaintiff's sister, testified that the boxes weighed approximately 50 pounds each and contained numerous cassette tapes, legal documents, and assorted papers. Due to the safe delivery of this property to plaintiff's immediate family members, plaintiff has failed to prove any negligence on the part of defendant.

{¶ 8} Plaintiff also maintains that defendant has lost additional property belonging to him including but not limited to two keyboards, one keyboard stand, trial transcripts, numerous books and photographs, and two manuscripts. In relation to this property, plaintiff is arguing that a bailment relationship arose with defendant; he claims that since he had possessed the property at OCI and that property is now missing, it follows that the institution is liable.

{¶ 9} When prison authorities obtain possession of an inmate's property, a bailment relationship arises between the correctional facility and the inmate. *Miller v. Department of Rehabilitation and Correction* (1985), Court of Claims No. 84-08661-AD; *Buhrow v. Ohio Department of Rehabilitation and Correction* (1985), Court of Claims No. 85-01562-AD. By virtue of this relationship, defendant must exercise ordinary care in handling and storing the property. *Id.*

{¶ 10} Plaintiff never testified that the remaining property had been delivered into defendant's possession. Instead, plaintiff testified only that "Sergeant Jones said I could finish boxing out

the stuff at Kirk School on Monday. Books, tapes, photographs, books I wrote, and headphones. A Yamaha Keyboard and a Casio keyboard." Additionally, there is no written record that defendant ever took possession of these items after plaintiff allegedly packed them. When asked what he believed happened to the property, plaintiff testified that he has no idea.

{¶ 11} Plaintiff's failure to prove delivery of the remaining property to defendant precludes the imposition of a legal duty on the part of defendant. *Prunty v. Department of Rehabilitation and Correction* (1987), 86-02821-AD.

{¶ 12} For the reasons set forth above, the court finds that plaintiff has failed to prove, by a preponderance of the evidence, that defendant was responsible for the loss of plaintiff's property. Therefore, judgment is recommended in favor of defendant. Further, plaintiff requested that this court determine the immunity of an unidentified tortfeasor. Based upon the above finding that no tort occurred and plaintiff's failure to identify the alleged tortfeasor, the court cannot address the issue of immunity.

{¶ 13} *A party may file written objections to the magistrate's decision within 14 days of the filing of the decision. A party shall not assign as error on appeal the court's adoption of any finding or conclusion of law contained in the magistrate's decision unless the party timely and specifically objects to that finding or conclusion as required by Civ.R. 53(E)(3).*

STEVEN A. LARSON
Magistrate

Entry cc:

Norman V. Whiteside, #A184-313
Box 740
London, Ohio 43140-0740

Plaintiff, Pro se

Randall W. Knutti
Assistant Attorney General
150 East Gay Street, 23rd Floor
Columbus, Ohio 43215-3130

Attorney for Defendant

LM/cmd
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